Group II. Claims 11-14 drawn to an apparatus classified in Class 422, subclass 129 et seq.

Applicants provisionally elect Group I, 1-10 and 15-22, with traverse.

Applicants now provide the following response to the written restriction requirement mailed June 4, 2002.

The Office Action acknowledges that "Inventions of I and II are related as process and apparatus for its practice."

The Office Action's reason for the restriction requirement is based on distinct inventions. The Office Action has taken the position that the inventions are distinct, each from the other, if it can be shown that either (1) the process as claimed can be practiced by another materially different process or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process (M.P.E.P. 806.05(e)). The Office Action reasons that, in this case, the apparatus as claimed can be used to practice another and materially different process such as leaching gold from ore or for making titanium dioxide.

The Office Action concludes that these inventions are distinct because the inventions are distinct for the reasons given and have acquired a separate status in the art as shown by their different classification and the search required for Group I is not required For Group II.

The Office Action advises that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.

The restriction requirement should be analyzed in an inquiry as to whether it can be shown that two or more inventions are in fact independent or patentably distinct. If they are patentably distinct, restriction may be proper. Where the several inventions claimed are related, and such related inventions are not patentably distinct as claimed, restriction is never proper. (M.P.E.P. §808.02).

As pointed out in M.P.E.P. §802.01, the term "distinct" means that two or more subjects as disclosed are capable of separate manufacture, use, or sale as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER.

If there is an understanding or contention that the claimed inventions are obvious over each other within the meaning of 35 U.S.C. §103, restriction should not be required. (M.P.E.P. §803).

Accordingly, if the instant restriction is improper within the Office practice applicable as pointed out, supra, then restriction in the present case should not be required, and the restriction requirement is respectfully requested to be withdrawn.

The Office Action takes the position in this case that:

> "[T]he apparatus as claimed can be used to practice another and materially different process such as leaching gold from ore or for making titanium dioxide.
>
> Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper."

The Office Action acknowledges that "Inventions of I and II are related as process and apparatus for its practice."

Where, as disclosed in Applicants' application, the inventions claimed are related, and such related inventions are not patentably distinct as claimed, restriction is never proper. (M.P.E.P. §808.02).

As pointed out in M.P.E.P. §806.03, where the claims of an application define the same essential characteristics of a disclosed embodiment of an invention, restriction should never be required.

In reference to M.P.E.P. §806.05(f), if Applicants traverse the restriction requirement, "the burden shifts to the Examiner to document a viable alternative prccess or product, or withdraw the requirement."

As pointed out in M.P.E.P. §803, even in the case of patentably distinct inventions, if the search and examination of an entire application can be made without serious burden, the

Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

Accordingly, restriction is improper within the Office practice applicable as pointed out, supra, because the Office Action has no support that these inventions are distinct and have acquired a separate status in the art as shown by their different classification, and that the search required for Group I is not required for Group II.

Restriction in the present case should not be required, and the restriction requirement is respectfully requested to be withdrawn.

For the foregoing reasons, the particular requirement for restriction is believed to be inappropriate and is respectfully requested to be withdrawn.

For the foregoing reasons, reconsideration of the restriction requirement is requested.

Reconsideration of this Application is requested.

Respectfully submitted,

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